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No. 84-5059

IN THE

Supreme Court of the United States

October Term, 1984

PATRICK RAMIREZ,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

BRIEF OF RESPONDENT

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QUESTION PRESENTED FOR REVIEW

Is the Petitioner entitled to a reversal of his conviction under Cause 424 due to a trial in an Indiana court for crimes (Cause 424) which were not set forth in a proper detainer and which did not arise out of the same transaction as the criminal charges (Cause 470) which formed the basis of a detainer filed by a prosecuting attorney to obtain temporary custody of the Petitioner under Article 4 of the Interstate Agreement on Detainers?

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BRIEF OF RESPONDENT

OPINION BELOW

The Court of Appeals of Indiana entered an opinion in this cause on October 26, 1983. The opinion is set forth in the joint appendix (J.A. 165-179) and is officially reported at 455 N.E.2d 609. A petition for rehearing was filed and was

denied by the Court of Appeals of Indiana on February 1, 1984. A petition for transfer was filed and was denied by the Supreme Court of Indiana, without opinion, on May 11, 1984 (J.A. 180).

STATEMENT OF THE CASE

On March 20, 1979, the Petitioner, Patrick Ramirez, was charged by information (Cause 424) with three counts of dealing in a schedule IV controlled substance, a Class C felony (J.A. 2-15). Thereafter, on April 5, 1979, the Petitioner waived formal arraignment, entered a plea of not guilty, requested a jury trial, and was released on bond (J.A. 18-21). On November 16, 1979, the Petitioner moved to withdraw his plea of guilty and to enter into a plea agreement with the State (J.A. 23-38). The trial judge, however, rejected the agreement and the cause was set for trial on December 14, 1979 (J.A. 35). Later, on February 6, 1980, the Petitioner was charged by information (Cause 470) with two counts of dealing in marijuana (J.A. 39-42).

On November 19, 1980, the Petitioner was incarcerated in the State Prison of Southern Michigan due to a conviction for dealing in cocaine (R.561, 576). On March 16, 1981, the Howard County, Indiana prosecuting attorney mailed to the warden of the State Prison of Southern Michigan certified copies of the two-count information in Cause 470, dealing in marijuana, and requested that the information be filed as a detainer against the Petitioner (J.A. 92-99). On June 23, 1981, the prosecuting attorney mailed on Agreement on Detainers, Form V, which notified the State Prison of Southern Michigan that the Petitioner was charged with three counts of dealing in marijuana under Cause 424 (R.555-556, J.A. 90-91). The information set forth in Form V, however, was erroneous. The form should have stated that the Petitioner was charged with three counts of dealing in a schedule IV controlled substance, rather than dealing in marijuana (R.587-589).

By means of the Michigan Department of Corrections Agreement on Detainers, Form I, the Michigan warden notified the Petitioner that an information (Cause 470) alleging two counts of dealing in marijuana had been filed against him by the Indiana prosecutor (R.559, J.A. 103-110). After the Petitioner was informed of the provisions of the Interstate Agreement on Detainers, he signed a waiver form and voluntarily agreed to be returned to Howard County, Indiana to stand trial on two counts of dealing in marijuana (Cause 470) (R.561-564, 567).

The Petitioner returned to Indiana on July 21, 1981 (R.580). On July 23, 1981, prior to trial in Cause 424, the State and the Petitioner entered into a second plea agreement whereby the Petitioner agreed to plead guilty to Count I, dealing in a schedule IV controlled substance (J.A. 43-46). The State consented to dismiss Count II in Cause 424 and also recommended that the sentence imposed in Cause 424 be served concurrently with the Petitioner's sentence in Cause 470 and the term of imprisonment imposed in the State of Michigan (J.A. 43-46). Subsequently, on August 17, 1981, the Petitioner moved to withdraw his plea of guilty and requested a jury trial (J.A. 47-50). The trial court granted the request (J.A. 47). Thereafter, on January 15, 1982, the Petitioner filed a motion to dismiss the information in Cause 424 asserting that the Michigan authorities had failed to inform him, in writing, of the existence, source, and contents of the detainer filed in that cause pursuant to the Interstate Agreement on Detainers, Article 9(7), IC §35-2.1-2-4 (Burns Repl. 1979); recodified at IC §35-33-10-4 (Burns Supp. 1984) (J.A. 51-58). After a hearing, the trial judge denied the motion (J.A. 59-87, 111).

The Petitioner was subsequently convicted of dealing in a schedule IV controlled substance (Cause 424) (J.A. 113-116). On June 8, 1982, the Petitioner was sentenced, in Cause 424, to a five year term of imprisonment to run consecutively to a two year term imposed in Cause 470 (J.A. 117-121). On appeal to the Court of Appeals of Indiana, the

Petitioner argued that the trial court erred by denying his motion to dismiss. The Court of Appeals, however, ruled that although the Petitioner's presence in Indiana was improperly secured under the Agreement, in Cause 424, dismissal of the conviction was not warranted. The court ruled that the manner in which a defendant is brought before a court has no effect upon the court's jurisdiction over him. *Ramirez v. State* (1983), Ind. App., 455 N.E.2d 609 (J.A. 165-179). Thereafter, the Supreme Court of Indiana, on May 11, 1984, denied the Petitioner's petition for transfer, without opinion (J.A. 180). On July 13, 1984, the Petitioner filed a *pro se* petition for writ of certiorari which was granted on October 29, 1984 (J.A. 181). On November 13, 1984, the Court granted the Petitioner's motion for appointment of counsel. The Petitioner filed a brief on the merits on January 14, 1985.

SUMMARY OF THE ARGUMENT

The writ of certiorari, in the instant case, should be dismissed as improvidently granted. A substantial federal question is absent since the Agreement is not a compact within the scope of the Compact Clause. The Agreement does not enhance state power at the expense of federal supremacy.

Further, even if the Agreement is subject to federal interpretation, a violation of the Agreement is not recognizable as a lack of personal or subject matter jurisdiction. It is well settled that the power of a court to try a person for a crime is not impaired by the fact that the person is forcibly brought within that court's jurisdiction. *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509.

Finally, the appropriate remedy for a breach of the Agreement, in this case, is the affirmance of the Petitioner's otherwise valid conviction under Cause 424 since the purpose/goals of the Agreement have been achieved. The Petitioner was afforded the right that the

Agreement, in general, was meant to secure—a speedy trial on outstanding charges. If dismissal of the conviction in Cause 424 is considered the appropriate remedy for a violation of Article 5(d) and Article 9(7), the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation and a speedy trial, but rather, to secure relief from an otherwise lawful conviction. To so construe the Agreement would make a mockery of the jury's verdict and serve to undermine the interests of justice.

INTRODUCTION

It is undisputed that the Petitioner's presence in Indiana for trial on Cause 424, dealing in a schedule IV controlled substance, was secured outside of the Interstate Agreement on Detainers, Article 5(d) and Article 9(7), IC §35-2.1-2-4 (Burns Repl. 1979); recodified at IC §35-33-10-4 (Burns Supp. 1984) (hereinafter, Agreement).[1] Thus, three issues must be resolved: whether the Agreement is within the scope of the Compact Clause; whether the Indiana trial court had jurisdiction to try the Petitioner under Cause 424, and whether reversal of the Petitioner's conviction under Cause 424 is an appropriate remedy for a breach of the Agreement.

In order to resolve this issue, it is necessary to determine whether the Agreement is a compact within the scope of the Compact Clause because it does not enhance state power at the expense of federal supremacy.[2] If the Agreement is

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[1]The Agreement is set forth, in its entirety, in Petitioner's Appendix A and Appendix B.

[2]This proposition is contrary to the majority holding in *Cuyler v. Adams* (1981), 449 U.S. 433, 101 S.Ct. 703. In *Cuyler*, the Court determined that the Agreement was a compact within the scope of the Compact Clause and subject to federal interpretation.

found to be an interstate compact, the Court should consider the applicability of the established principles set forth in *Ker v. Illinois* (1886), 119 U.S. 436, 7 S.Ct. 225 and *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509. If the first two issues are decided adversely to the Respondent, it will be necessary to determine what, if any, remedy is available to the Petitioner.

BACKGROUND
INTERSTATE AGREEMENT ON DETAINERS

The Agreement, a uniform law enacted by the majority of the states and the federal government, encourages the expeditious and orderly disposition of criminal charges and determination of the proper status of any and all detainers[3] based on untried indictments, informations, or complaints. The Agreement was promulgated due to the ease of filing detainers, obstacles in the prompt rendition of a prisoner, and the risk of loss, to both the prosecution and defense, of witnesses or evidence during protracted delays caused by the incarceration of a prisoner in another state.

Moreover, in recommending the adoption of the Agreement, the Council of State Governments noted that prison administrators were "thwarted in [their] effort[s] toward rehabilitation [because t]he inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program." Council of State Governments, *Suggested State Legislation Program For 1957*, 74 (1956). The Council of State Governments also noted that the existence of detainers presented problems in sentencing. When

[3]The term "detainer" is not defined in the Agreement. It has been otherwise defined, however, as a "notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *Ridgeway v. United States*, (6th Cir. 1977) 558 F.2d 357. The detainer, itself, does nothing to affect the prosecution of a prisoner.

detainers had previously been filed against a defendant, the sentencing judge would hesitate to give as long a sentence as he thought might otherwise be indicated, there being a possibility that the defendant would be required to serve subsequent sentences. The Council stated that "proper sentencing, as well as proper correctional treatment, is not possible until the detainer system is modified." Council of State Governments, supra, 74 (1956).

It was against this scenario, therefore, that the Joint Committee on Detainers published a statement of principles which later served as the underpinnings of the Agreement. The guiding principles of the Agreement, which is to be liberally construed to effectuate its purposes, are set forth in *United States v. Mauro* (1978), 436 U.S. 340, 349, 98 S.Ct. 1834, 1842:

> 1. Every effort should be made to accomplish the disposition of detainers as promptly as possible.
>
> 2. There should be assurance that any prisoner released to stand trial in another jurisdiction will be returned to the institution from which he was released.
>
> 3. Prison and parole authorities should take prompt action to settle detainers which have been filed by them.
>
> 4. No prisoner should be penalized because of a detainer pending against him unless a thorough investigation of the detainer has been made and it has been found valid.
>
> 5. All jurisdictions should observe the principles of interstate comity in the settlement of detainers, and each should bear its own proper burden of the expenses and effort involved in disposing of the charges and settling detainers.

A SUBSTANTIAL FEDERAL QUESTION IS ABSENT, IN THIS CASE, SINCE THE AGREEMENT IS NOT A COMPACT WITHIN THE SCOPE OF THE COMPACT CLAUSE

Contrary to the majority holding in *Cuyler v. Adams* (1981), 449 U.S. 433, 101 S.Ct. 703, the Respondent submits that the Agreement is not a compact within the scope of the Compact Clause[4] because it does not enhance state power at the expense of federal supremacy. In *New Hampshire v. Maine* (1976), 426 U.S. 363, 96 S.Ct. 2113, the Court ruled that the "application of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of the political power in the States, which may encroach upon or interfere with the just supremacy of the United States'." *Id.*, at 369, 96 S.Ct. at 2117, quoting *Virginia v. Tennessee* (1893), 148 U.S. 503, 519, 13 S.Ct. 728, 734. Further, in *United States Steel Corp. v. Multistate Tax Commission* (1978), 434 U.S. 452, 471, 98 S.Ct. 799, 812, the Court reaffirmed the above-stated rule since the rule "states the proper balance between federal and state power with respect to compacts and agreements among States." In applying the rationale of these decisions to the Agreement, it is apparent that state power is not enhanced to the detriment of federal sovereignty. In comparing the Agreement with the multistate tax compact in *Multistate Tax Commission*, any state may join the Agreement. Therefore, the power of member states is not promoted above that of non-member states.

In addition, whether a particular state enactment is within the Compact Clause depends on whether it requires

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[4]Article I, section 10, clause 3 of the United States Constitution commonly referred to as the "compact clause," provides: "No state shall, without the consent of Congress, ... enter into any agreement or compact with another state, or with a foreign power..."

the consent of Congress.[5] The majority in *Cuyler* framed its inquiry as "whether the Detainer Agreement is a congressionally sanctioned interstate compact within Article 1, section 10 of the Constitution" and concluded that "the consent of Congress transforms the State's agreement into federal law under the Compact Clause." In *Cuyler*, the majority did not consider an essential step in a Compact Clause analysis: whether the Agreement falls within the scope of the Compact Clause. In *Virginia v. Tennessee*, *supra*, the Court stated that an agreement does not fall within the scope of the Compact Clause if it does not increase the political power of the states in a way that encroaches upon federal supremacy. Nevertheless, the majority did not apply this test to whether the Agreement actually requires congressional consent. Rather than resolving this question by means of a *Virginia v. Tennessee* analysis, the Court suggested that the Agreement encroaches upon federal sovereignty because it is a subject matter "appropriate for congressional legislation." *Cuyler*, 449 U.S. at 442, 101 S.Ct. at 708.

It is apparent, however, that the "appropriate for congressional legislation" test is less restrictive than the "encroachment upon federal supremacy" test. Under the earlier encroachment test, only exceptional arrangements were within the parameters of the Compact Clause. Indeed, most cases decided after *Virginia v. Tennessee* concluded that the compact in question was not within the scope of the Compact Clause and, therefore, was to be interpreted pursuant to state law.[6] Thus, under *Cuyler*, all interstate

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[5] *See* Engdahl, *Construction of Interstate Compacts: A Questionable Federal Question*, 51 Va.L. Rev. 987, 1017 (1965): "[T]he construction of a compact not requiring consent even if Congress has consented, will not present a federal question. . ."

[6] *See, e.g., North Carolina v. Tennessee* (1914), 235 U.S. 1, 35 S.Ct. 8; *State v. Doe* (1962), 149 Conn. 216, 178 A.2d 271.

compacts, whether or not they encroach upon federal supremacy, are transformed into federal law if they not only involve an area in which Congress might legislate, but also receive congressional consent.

An extraordinary broadening of the scope of the Compact Clause is the effect of *Cuyler*. For instance, a congressionally approved state compact which involves any aspect of interstate commerce will present, under *Cuyler*, a federal question since interstate commerce is an appropriate subject for congressional legislation. *See United States v. South-Eastern Underwriters Association* (1944), 322 U.S. 533, 64 S.Ct. 1162. It is appropriate to preserve the supremacy of the federal government. The expansive standard set forth in *Cuyler*, however, impinges upon state sovereignty. While the Court has indicated that interstate agreements are a more satisfactory means of resolving state controversies than judicial procedures, *New York v. O'Neill* (1959), 359 U.S. 1, 79 S.Ct. 564, the fact that compacts will be subject to federal interpretation may make states reluctant to enter into such agreements.

If the Agreement had been analyzed, in *Cuyler*, in terms of its encroachment upon federal supremacy, a different result might have been reached. In *Multistate Tax Commission*, the Court cited with approval *New York v. O'Neill* in which the constitutionality of the Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings, 11 U.L.A. 1 (1936) was challenged. Although *O'Neill* did not specifically present a Compact Clause question, the statute at issue was "within the unrestricted area of action left to States by the Constitution." *New York v. O'Neill*, 359 U.S. at 6, 79 S.Ct. at 568. The conclusion in *Multistate Tax Commission* suggests that the Uniform Law to Secure the Attendance of Witnesses, like the multistate tax compact, was not within the scope of the Compact Clause. The impact of the statute in *O'Neill* and that of the Agreement are similar: both are to secure the attendance, at trial, of out-of-

state persons. If the Uniform Law to Secure the Attendance of Witnesses is not within the scope of Compact Clause, then neither is the Agreement. Thus, a substantial federal question, in this case, is absent.

EVEN IF THE AGREEMENT IS SUBJECT TO FEDERAL INTERPRETATION, A VIOLATION OF THE AGREEMENT IS NOT RECOGNIZABLE AS A LACK OF PERSONAL OR SUBJECT MATTER JURISDICTION

A violation of the Agreement is not recognizable as a claim of lack of subject matter jurisdiction—the power or authority conferred upon a court to decide a given type of case. *Hagans v. Levine* (1974), 415 U.S. 528, 94 S.Ct. 1372; *United States v. Edwards*, (2nd Cir. 1977) 564 F.2d 652. In *Ker v. Illinois* (1886), 119 U.S. 436, 7 S.Ct. 225, the Court ruled that the power of a court to try a person for a crime would not be impaired by the fact that the person was forcibly brought within that court's jurisdiction. The Court has consistently so ruled through a line of cases[7] leading to *Frisbie v. Collins* (1952), 342 U.S. 519, 72 S.Ct. 509 and beyond, *Gerstein v. Pugh* (1975), 420 U.S. 103, 95 S.Ct. 854; *United States v. Crews* (1980), 445 U.S. 463, 100 S.Ct. 1244. The *Ker- Frisbie* doctrine is rooted in the perception that:

> due process of law is satisfied when one present in court is convicted of crime after being fairly apprised of charges against him and after a fair trial in accordance with constitutional procedural safeguards.

Frisbie, 342 U.S. at 522, 72 S.Ct. at 512.

This doctrine, however, has been questioned in instances where a defendant's presence before a court is procured by methods which violate fundamental principles of due process recognized after *Frisbie* was decided. *See United*

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[7]*See, e.g., Mahon v. Justice* (1888), 127 U.S. 700, 8 S.Ct. 1204; *In re Johnson* (1897), 167 U.S. 120, 17 S.Ct. 735.

States v. Toscanino, (2nd Cir. 1974) 500 F.2d 267, 275. An analysis, however, of *Ker* and its progeny compels the conclusion that in cases other than those where constitutional rights are violated or where the conduct by which jurisdiction is obtained is egregious, a subsequent conviction will not be vacated. *United States ex rel. Lujon v. Gengler*, (2nd Cir. 1975) 510 F.2d 62, 64-66, *cert. denied*, 421 U.S. 1001.

In addition, a court once acquiring jurisdiction retains it until there is a final disposition of the matter or proceeding before it. Jurisdiction, once attached, is not lost by subsequent events. *State ex rel. Kelly v. Marion County Criminal Court, Division Three* (1978), 269 Ind. 46, 378 N.E.2d 833. In the present case, the Petitioner, on March 20, 1979, was charged by information (Cause 424) with three counts of dealing in a schedule IV controlled substance (J.A. 2-15). Thereafter, on April 5, 1979, the Petitioner waived formal arraignment, entered a plea of not guilty, and was released on bond (J.A. 18-21). Thus, the Indiana trial court was not divested of its jurisdiction over the Petitioner during the Petitioner's incarceration in Michigan. When the Petitioner returned to Indiana to stand trial on Cause 470 and Cause 424, the jurisdiction of the trial court continued through conviction and final judgment.

In addition, an examination of the Agreement disposes of the Petitioner's contention that the trial court was deprived of jurisdiction. The Agreement constitutes nothing more than a set of procedural rules. The procedures delineated in the Agreement do not rise to the level of constitutionally guaranteed rights and are neither fundamental nor jurisdictional[8] in nature. *United States v. Scheer*, (2nd Cir.

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[8]In *Camp v. United States*, (8th Cir. 1978) 587 F.2d 397, the court ruled that a violation of Article 4 of the Agreement by taking a state prisoner into federal custody and returning the prisoner to state custody without bringing him to trial was a non-jurisdictional error and did not deprive a district court of its jurisdiction to entertain a guilty plea when the prisoner was again transferred from state to federal custody to stand trial.

1984) 729 F.2d 164; *Kowalak v. United States*, (6th Cir. 1981) 645 F.2d 534. Articles 5(d) and 9(7) are procedural rules. A violation of these provisions neither affects the fairness and accuracy of the fact finding procedure nor affects other due process or fair trial rights. *Brown v. District Court* (1977), 194 Colo. 225, 571 P.2d 1091.

Violations of Article 5(d) and Article 9(7), in this case, were insufficient to divest the trial court of jurisdiction contrary to the general rule enunciated in *Frisbie, supra*. To interpret otherwise, would frustrate rather than promote the stated policies of the Agreement. While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the reversal of the Petitioner's valid conviction under Cause 424. Indeed, the force of this justification becomes minimal where reversal is sought by a prisoner who has been afforded the opportunity for a full and fair trial. The Agreement protects no constitutional guarantees per se and transgression of its provisions does not amount to conduct so reprehensible as to mandate vacation of an otherwise validly imposed sentence. No factual basis for a deviation from the *Ker-Frisbie* doctrine exists in the instant case.

THE APPROPRIATE REMEDY FOR A VIOLATION OF THE AGREEMENT, IN THIS CASE, IS THE AFFIRMANCE OF THE PETITIONER'S OTHERWISE VALID CONVICTION UNDER CAUSE 424 SINCE THE PURPOSE/GOALS OF THE AGREEMENT HAVE BEEN ACHIEVED

It is undisputed not only that the Indiana prosecutor failed to set forth correct information concerning the offenses in Cause 424 in his notification to the warden of the Michigan prison, but also that the Michigan warden failed to notify the Petitioner of the existence of the second detainer. Hence, two questions arise. First, is the Petitioner entitled to a remedy under the facts? Second, is reversal of the Petitioner's valid conviction under Cause 424 an appropriate remedy? On these questions, the Agreement is

entirely silent. The Agreement, however, provides that dismissal of the indictment, information, or complaint is the appropriate sanction for other forms of non-compliance with its provisions. *See* Article 3,[9] Article 4(e), and Article 5(c). Where the Agreement provides sanctions for some violations, but is silent as to sanctions for other violations, the silence should be considered as evidence that the drafters of the Agreement did not intend to provide a remedy. *See also* Council of State Governments, *Suggested State Legislation Program For 1957* (1956). Nevertheless, the Petitioner argues that the language of Article 5(d) and Article 9(7) mandate that his conviction under Cause 424 be reversed.

It is the duty of courts to render an interpretation of the laws which will best serve the ends of justice. On the basis that a technicality should not be permitted to override justice, the general intention of the legislature must be considered in order to interpret the words of a statute in light of the purposes the legislature sought to serve. *Dickerson v. New Banker Institute, Inc.* (1983), 460 U.S. 103, 103 S.Ct. 986. In the present case, since the Agreement

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[9]Despite the fact that this case was handled under the rubric of Article 4 and not Article 3, in cases which interpret Article 3(c), a provision of the Agreement similar to Article 9(7), there is a split of authority as to the appropriate sanction to be imposed when officials of a custodial state do not comply with the mandate of Article 3(c). In *State v. Clark* (1977), 222 Kan. 65, 563 P.2d 1028, the Supreme Court of Kansas ruled that in the event of such noncompliance a defendant was limited to the raising of a constitutional challenge on speedy trial grounds. A contrary view places the burden of the custodial state's noncompliance on the prosecutor of the receiving state and holds that dismissal of the charges is the appropriate sanction. *People v. Lincoln* (1979), 42 Colo. App. 512, 601 P.2d 641. The Court of Appeals of Michigan, cognizant of the split of authority on this question, not only expressly stated that dismissal with prejudice may not always be the proper remedy for an Article 3(c) violation, but also ruled that dismissal is the proper remedy when officials had not made the "slightest effort" to assure a defendant received notice and advisement of his Interstate Agreement on Detainer rights. *People v. Bentley* (1982), 121 Mich. App. 36, 328 N.W.2d 389.

is entitled to a liberal construction,[10] it should not be given a construction so technical or narrow as to defeat its purposes or design. *Mohasco Corp. v. Silver* (1980), 447 U.S. 805, 100 S.Ct. 2486. Statutes should be interpreted to avoid unreasonable results whenever possible. *American Tobacco Co. v. Patterson* (1982), 456 U.S. 63, 102 S.Ct. 1534. With these maxims of statutory construction and the purpose of the Agreement in mind, it is apparent that the Petitioner's position has no support in either the language of the Agreement or its legislative history. The Agreement must not be read expansively to include what is not plainly embraced within the language of its provisions. It is just as important to recognize what a statute does not say as it is to recognize what it does say.

One of the purposes of the Agreement is to ensure the expeditious disposition of outstanding charges against a prisoner. In this case, the Indiana prosecutor acted swiftly under the Agreement and tried the Petitioner under Cause 470 and Cause 424 within the prescribed period of time. Although the Petitioner's presence in Indiana, for purposes of prosecution under Cause 424, was secured outside the Agreement, the Petitioner received the right that the Agreement, in general, was meant to secure— a speedy trial on outstanding charges.[11] *Wallace v. Hewitt*, (M.D. Penn. 1976) 428 F. Supp. 39, 42.

Further, the Petitioner does not allege that he was harmed by the violation. Dismissal of the conviction in

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[10]Article 9(1) of the Agreement provides in part that the "Agreement shall be liberally construed so as to effectuate its purposes."

[11]Compare, the Uniform Criminal Extradition Act, 11 U.L.A. 51 (1936); codified in Indiana as IC §35-33-10-3 (Burns Supp. 1984). Subsection 7 of the statute reads:

> "after a person has been brought back to this State upon extradition proceedings, he maybe tried in this State for other crimes which he may be charged with having committed here, as well as that specified in the requisition for his extradition."

Cause 424 is not justified where no legitimate interest of the Petitioner is defeated by the violation. *Sassoon v. Stynchcombe*, (5th Cir. 1981) 654 F.2d 371. The Petitioner was well aware of the offenses in Cause 424 and attempted to plead guilty to the offenses prior to his incarceration in Michigan. The Petitioner was given a fair trial and a full opportunity to contest the charge against him. If dismissal of the conviction in Cause 424 is considered the appropriate remedy for a violation of Article 5(d) and Article 9(7), the Agreement could be used, not for the purpose of protecting any legitimate interest a prisoner may have in his rehabilitation and a speedy trial, but rather, to secure relief from an otherwise lawful conviction. To so strictly construe the Agreement would make a mockery of the jury's verdict and serve to undermine the interests of justice. Legislative intent would be frustrated by permitting the release of the Petitioner already convicted of the charge. Due to substantial public interest in the finality of criminal convictions, reversal or even remand for notice and a hearing would encourage piecemeal litigation of claims of error and undercut the policy of achieving prompt and final judgments.

CONCLUSION

Accordingly, based on the above analysis, the violation of Article 5(d) and Article 9(7) is a nonjurisdictional error. In addition, policies of the Agreement were served, in this case, by the expeditious and orderly disposition of the Petitioner's charge. The Court, in reviewing the provisions of the Agreement, should not impute to the legislature a purpose to paralyze with one hand what it sought to promote with the other. *United States v. Raddatz* (1980), 447 U.S. 667, 100 S.Ct. 2406. The Petitioner's conviction on Cause 424 should not be reversed.

Respectfully submitted,

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